

JULY 1, 1976

THE SUPREME COURT ON FREE PRESS-FAIR TRIAL

ANNCR:

THE U.S. SUPREME COURT HAS HANDED DOWN A LONG-AWAITED RULING ON HOW TO RESOLVE CONFLICTS BETWEEN FREEDOM OF THE PRESS AND THE RIGHT OF A CRIMINAL DEFENDANT TO RECEIVE A FAIR TRIAL. CHRIS KERN HAS SOME THOUGHTS ON THE COURT'S DECISION.

VOICE:

THOMAS JEFFERSON ONCE SAID IT WOULD BE BETTER TO HAVE NEWSPAPERS AND NO GOVERNMENT THAN TO HAVE A GOVERNMENT AND NO NEWSPAPERS. BUT IN FACT THE TWO INSTITUTIONS HAVE TO COEXIST, AND THE U.S. SUPREME COURT THIS WEEK HELPED TO CLARIFY THE RULES BY WHICH THEY DO SO.

IN ITS MOST IMPORTANT DECISION ON PRESS-GOVERNMENT RELATIONS IN SEVERAL YEARS, THE COURT HAS RULED THAT AMERICAN TRIAL JUDGES DON'T HAVE THE CONSTITUTIONAL AUTHORITY TO BAN NEWS COVERAGE OF A CRIMINAL PROCEEDING -- EVEN THOUGH THEIR PURPOSE IS TO PROTECT THE RIGHTS OF THE DEFENDANT.

THE CASE BEFORE THE COURT INVOLVED A SENSATIONAL MASS MURDER TRIAL IN NEBRASKA, A SPARSELY SETTLED STATE IN THE CENTER OF THE COUNTRY. THE PRESIDING JUDGE FELT THAT ALL THE PRETRIAL PUBLICITY THE CASE WAS GETTING WOULD MAKE IT DIFFICULT TO CHOOSE AN UNPREJUDICED JURY FROM THE SURROUNDING COMMUNITY AND SO HE ORDERED THE NEWSMEN WHO WERE COVERING THE TRIAL NOT TO PRINT OR BROADCAST ANYTHING THAT WOULD MAKE THE DEFENDANT APPEAR GUILTY.

SEVERAL NEWS ORGANIZATIONS APPEALED, AND THE SUPREME COURT SAID THAT KIND OF RESTRAINT UNCONSTITUTIONALLY INTERFERED WITH FREEDOM OF THE PRESS. THE CLOSELY-REASONED OPINION BY CHIEF

JUSTICE WARREN BURGER CAREFULLY AVOIDED SAYING THAT SUCH "GAG ORDERS" ALWAYS VIOLATE THE FREE PRESS GUARANTEE. BUT IT SUGGESTED THAT IF THEY ARE CONSTITUTIONAL AT ALL, IT'S ONLY WHEN THERE IS NO OTHER WAY TO PROTECT THE RIGHTS OF A DEFENDANT.

MANY AMERICAN NEWSMEN, AS WELL AS A MINORITY OF THE NINE SUPREME COURT JUSTICES, WOULD HAVE LIKED TO SEE THE COURT GO FURTHER AND RULE OUT ANY RESTRAINT ON WHAT REPORTERS CAN PRINT OR BROADCAST. THEY ARGUE THAT ANYTHING SHORT OF A FLAT PROHIBITION WILL ENCOURAGE JUDGES TO FIND NEW WAYS OF RESTRICTING NEWS COVERAGE.

(OPT) BUT THE SUPREME COURT SEEMED TO BE AUTHORIZING PRECISELY THAT KIND OF EXPERIMENTATION IN ANOTHER OF THIS WEEK'S ACTIONS WHEN IT REFUSED TO CONSIDER THE CONSTITUTIONALITY OF INDIRECT RESTRAINTS ON NEWSMEN. THE COURT DECLINED TO RULE ON WHETHER A JUDGE HAS THE RIGHT TO ORDER LAWYERS AND WITNESSES NOT TO DISCUSS A CASE WITH REPORTERS AND THEN TO DEMAND THAT THE REPORTERS DISCLOSE THE NAME OF ANYONE WHO TALKED TO THEM IN VIOLATION OF THE ORDER. (END OPT)

THERE MAY BE SOME CASE IN THE FUTURE WHERE THE SUPREME COURT WILL HAVE NO CHOICE BUT TO DECIDE WHETHER THE GUARANTEE OF A FREE PRESS TAKES PRIORITY OVER THE RIGHT TO A FAIR TRIAL. BUT A MAJORITY OF THE JUSTICES OBVIOUSLY BELIEVE THAT IT'S POSSIBLE TO FIND A MIDDLE GROUND BETWEEN THE TWO COMPETING CONSTITUTIONAL PROVISIONS WHERE BOTH THE TRIAL COURTS AND THE PRESS CAN FUNCTION RELATIVELY FREELY.

GH/PBH